Supreme Court, U.S.
FILED
FEB 1 1991
JOSEPH F. SPANIOL, JR.
CLERK

No. 89-609

In The

Supreme Court of the United States

October Term, 1990

DONALD and ERNA PUCKETT;
FRED and VIRGINIA SLAWSON,

Petitioners,

v.

NATIVE VILLAGE OF TYONEK,

Respondent.

RESPONDENT'S SUPPLEMENTAL MEMORANDUM

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CONTINGENT REQUEST FOR PLENARY REVIEW

Contingent on this Court's disposition of certain questions presented in Oklahoma Tax Commission v. The Citizen Band Potawatomi Indian Tribe of Oklahoma, No. 89-1322, and in Hoffman v. Native Village of Noatak, et al., No. 89-1782, the Native Village of Tyonek, respondent herein, respectfully submits this supplemental memorandum to request that the court grant the petition for a writ of certiorari herein and schedule the matter for plenary review unless the Court, regardless of the outcome in Oklahoma Tax Commission and Native Village of Noatak, determines to dismiss the petition for a writ of certiorari herein.

Oklahoma Tax Commission and Native Village of Noatak each raise issues in common with the issue s presented for

review here. Oklahoma Tax Commission presents for review two issues raised by the petitioners here. These are: (1) whether Indian tribes possess sovereign immunity from unconsented counterclaims, and (2) whether the lands governed by the tribe are "Indian country." Native Village of Noatak asks the Court to review whether the Native Villages of Noatak and Circle are recognized "Indian tribes." Here, petitioners have asked the Court to review whether the Native Village of Tyonek is a recognized "Indian tribe."

The Native Village of Tyonek's request that the Court schedule plenary review of the decisions below is made contingent on the Court ruling adversely to the Citizen Band Potawatomi Indian Tribe of Oklahoma or the Native Village of Noatak on any of

the issues identified above. In the event of such a ruling or rulings, the Native Village of Tyonek respectfully submits that a summary disposition in favor of the petitioners here, based on such ruling or rulings, would be inappropriate and unjustified.

While the Native Village of Tyonek agrees with the Native Villages of Noatak and Circle that Alaska Native villages, in general, are federally recognized Indian tribes, the Native Village of Tyonek does have a legal and factual history, fully developed in the record below, that is different in certain important respects from the histories of both Noatak and Circle and that strongly supports the conclusion that the Native Village of Tyonek is a recognized Indian tribe. The legal and factual history

pertaining to the Indian country status of the lands occupied by the Native Village of Tyonek is also fully developed in the record below. It is a history remarkably different from the history of the lands occupied by the Citizen Band Potawatomi Indian Tribe of Oklahoma. This history also strongly supports the conclusion that the lands occupied by the Native Village of Tyonek are Indian country.

With respect to the tribal sovereign immunity issue raised in Oklahoma Tax Commission, the Native Village of Tyonek supports the position of the Citizen Band Potawatomi Indian Tribe and the Solicitor General. However, should the Court rule that the Citizen Band Potawatomi Indian Tribe does not have sovereign immunity from the counterclaim of the Oklahoma Tax

Commission, the Native Village of Tyonek submits that there are critical differences between the governmental counterclaim in that case and the private counterclaim in the case at bar that would support tribal sovereign immunity from the counterclaims at issue here. Among these differences, for example, is the fact that in Oklahoma Tax Commission, the tribe asserted sovereign immunity from a counterclaim that the tribe's actions violated the governmental powers of the State of Oklahoma as established in prior decisions of this Court. Moreover, these powers have direct impact on the state treasury. The counterclaim does not implicate the basic sovereign powers of the tribe. Here, in contrast, the counterclaim directly challenges governmental actions of the Native

Village of Tyonek that were undertaken in the exercise of Tyonek's fundamental sovereign powers over tribal lands and over people. Unlike Oklahoma Tax Commission, upholding the sovereign immunity of the Native Village of Tyonek would not impinge on any powers of the State of Alaska or adversely affect the state treasury. Plenary review is necessary in order for these differences to be fairly considered before any tribal sovereign immunity ruling that may emerge from Oklahoma Tax Commission is applied to the Pucketts' and Slawsons' counterclaims against the Native Village of Tyonek.

For the foregoing reasons, the Native Village of Tyonek respectfully requests that, contingent on the Court ruling against the Native Villages of Noatak and

Circle on the tribal status issue or against the Citizen Band of Potawatomi Tribe of Indians on the tribal sovereign immunity question, the Court grant the petition for a writ of certiorari herein and schedule the matter for plenary review unless the Court determines, regardless of the occurrence of such contingency, to deny the petition for a writ of certiorari herein.

DATED: January, 1991.

Respectfully submitted,

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